



6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (OIRA) in OMB within 30 days of this notice's publication by either of the following methods. Please identify the comments by "OMB Control No. 3038-0049."

- By email addressed to: OIRAsubmissions@omb.eop.gov or
- By mail addressed to: the Office of Information and Regulatory Affairs, Office of

Management and Budget, Attention Desk Officer for the Commodity Futures Trading Commission, 725 17th Street, NW., Washington DC 20503.

A copy of all comments submitted to OIRA should be sent to the Commodity Futures Trading Commission (the “Commission”) by either of the following methods. The copies should refer to “OMB Control No. 3038-0049.”

- By mail addressed to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581;
- By Hand Delivery/Courier to the same address; or
- Through the Commission’s website at <http://comments.cftc.gov>. Please follow the instructions for submitting comments through the website.

A copy of the supporting statements for the collection of information discussed herein may be obtained by visiting <http://RegInfo.gov>.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in §145.9 of the Commission’s regulations.¹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative

¹ 17 CFR 145.9.

Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Jocelyn Partridge, Special Counsel, Division of Clearing and Risk, (202) 418-5926, e-mail: jpartridge@cftc.gov; Meghan Tente, Special Counsel, Division of Clearing and Risk, (202) 418-5785, email: mtente@cftc.gov; Jacob Chachkin, Special Counsel, Division of Swaps and Intermediary Oversight, (202) 418-5496, email: jchachkin@cftc.gov; or Dana Brown, Paralegal Specialist, Division of Market Oversight, (202) 418-5093, e-mail: dbrown@cftc.gov; or (202) 418-5093.

SUPPLEMENTARY INFORMATION:

Title: Procedural Requirements for Requests for Interpretative, No-Action and Exemptive Letters (OMB Control No. 3038-0049). This is a request for an extension of a currently approved information collection.

Abstract: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB number. This collection covers the information requirements for voluntary requests for, and the issuance of, interpretative, no-action, and exemptive letters submitted to Commission staff pursuant to the provisions of §140.99 of the Commission's regulations,² and related requests for confidential treatment pursuant to §140.98(b)³ of the Commission's regulations. It includes reporting and recordkeeping requirements.

The collection requirements described herein are voluntary. They apply to parties that choose to request a benefit from Commission staff in the form of the regulatory action described

² 17 CFR 140.99. An archive containing CFTC staff letters may be found at <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm>.

³ 17 CFR 140.98(b).

in §140.99. Such benefits may include, for example, relief from some or all of the burdens associated with other collections of information, relief from regulatory obligations that do not constitute collections of information, interpretations, or extensions of time for compliance with certain Commission regulations. It is likely that persons who would opt to request action under §140.99 will have determined that the information collection burdens that they would assume by doing so will be outweighed substantially by the relief that they seek to receive.

The information collection associated with §140.99 of the Commission's regulations is necessary, and would be used, to assist Commission staff in understanding the type of relief that is being requested and the basis for the request. It is also necessary, and would be used, to provide staff with a sufficient basis for determining whether: (1) granting the relief would be necessary or appropriate under the facts and circumstances presented by the requestor; (2) the relief provided should be conditional and/or time-limited; and (3) granting the relief would be consistent with staff responses to requests that have been presented under similar facts and circumstances. In some cases, the requested relief might be granted upon the condition that those who seek the benefits of that relief fulfill certain notice and other reporting obligations that serve as substituted compliance for regulatory requirements that would otherwise be imposed. In some cases, the conditions might include reporting or recordkeeping requirements that are necessary to ensure that the relief granted by Commission staff is appropriate. In some cases, the parties obtaining relief may be subject to reporting and recordkeeping requirements that are necessary to monitor for the parties' compliance with the conditions imposed. The foregoing categories may or may not be overlapping. Once again, it is likely that those who would comply with these conditions will have determined that the burden of complying with the conditions is outweighed by the benefit of the relief that they seek to receive. The information collection

associated with §140.98(b) of the Commission's regulations is necessary to provide a mechanism whereby persons requesting no-action, interpretative and exemption letters may seek temporary confidential treatment of their request and the Commission staff response thereto and the grounds upon which such confidential treatment is sought.

On March 29, 2017, the Commission published in the Federal Register notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 82 FR 15514, March 29, 2017 ("60-Day Notice").

Burden Statement: In order to establish estimates of the annual information collection burden associated with the exemptive, no-action and interpretative letters that may be issued by Commission staff during the three year renewal period, Commission staff reviewed the letters of this type that were issued by Commission staff during 2016. This timeframe was chosen because it was believed that such recent experience would be indicative of both the quantity of requests that Commission staff expects to receive and the quantity of letters that Commission staff expects to issue on an annual basis during the renewal period and the information collection burdens that may be associated with them. In some cases, the relief granted in 2016 is unlikely to be requested again as it has been superseded by a Commission rulemaking. The projected burden estimates for the renewal period were not reduced accordingly in order to account for the possibility that new issues may arise. It is also possible that certain relief granted in 2016 may be superseded by a future Commission rulemaking. As future rulemakings and their effective dates are speculative, the estimates for the renewal period have not been reduced to account for potential rulemakings.

The annual respondent burden for this collection during the renewal period is estimated to be as follows:

Estimated Number of Respondents: 284.

Estimated Average Annual Burden Hours Per Respondent: 9.5.

Estimated Total Annual Burden Hours: 2,704.

Frequency of Collection: Occasional.

Type of Respondents: Respondents include persons registered with the Commission (such as commodity pool operators, commodity trading advisors, derivatives clearing organizations, designated contract markets, futures commission merchants, introducing brokers, swap dealers, and swap execution facilities); persons seeking an exemption from registration; persons whose registration with the Commission is pending; trade associations and their members; eligible contract participants; and other persons seeking relief from discrete regulatory requirements.

There are no capital costs or operating and maintenance costs associated with this collection.

These estimates, as set forth in greater detail below, include the burden hours for complying with the information requirements for exemptive, no-action and interpretative letters contained in §140.99(c) of the Commission's regulations; effecting the filing of such letters pursuant to §140.99(d); providing notice to Commission staff of materially changed facts and circumstances pursuant to §140.99(c)(3)(ii); complying with any conditions and monitoring that may be contained in a grant of no-action or exemptive relief pursuant to §140.99(e); complying with requirements to make disclosures to third parties; and preparing and submitting withdrawals of requests for exemptive, no-action and interpretative letters, as provided in §140.99(f). The

estimates also include burden hours related to a request for confidential treatment made pursuant to §140.98(b) of the Commission's regulations.⁴

The burden hours associated with requests for exemptive, no-action and interpretative letters include both the drafting and filing of the request itself as well as performing the underlying factual or legal analysis generally to comply with the information collection. The burden hours associated with individual requests will vary widely, depending upon the type and complexity of relief requested, whether the request presents novel or complex issues, the relevant facts and circumstances, and the number of requestors or other affected entities. The Commission provides estimates of the amount of time that any requestor spends on any particular request as each request is unique, based upon the preceding factors.

	<u>ESTIMATED ANNUAL RESPONDENTS</u>	<u>ESTIMATED ANNUAL REPORTS OR RECORDS PER RESPONDENT</u>	<u>TOTAL ANNUAL RESPONSES</u>	<u>ESTIMATED AVERAGE NUMBER OF HOURS PER RESPONSE</u>	<u>ESTIMATED ANNUAL BURDEN HOURS</u>
<u>REPORTING</u>					
§ 140.99 (c) - information requirements for letters	78	1	78	24.7	1,930
§ 140.99(d) - filing requirements	78	1	78	1	78
§ 140.99 (c)(3)(ii) – materially changed facts and circumstances	5	1	5	3	15
§ 140.99(e) – staff response (conditions imposed)	16	1	16	5	80
§ 140.99(f) - withdrawal of requests	5	1	5	1	5
§ 140.98(b) – requests for confidential treatment	42	1	42	1	42
<u>TOTAL REPORTING</u>	224	1	224	9.6	2,150
<u>RECORDKEEPING</u>					
§ 140.99(e) - staff	54	4	216	1	216

⁴ The Commission now includes the collection of information related to Commission regulation 41.3(b), which involves exemption requests from certain intermediaries, under OMB number 3038-0059 and, as such, is no longer including it in this OMB number.

response (conditions imposed)					
<u>DISCLOSURES TO THIRD PARTIES</u>	6	56.4	338	1	338
TOTAL	284	2.7	778	3.5	2,704

Authority: 44 U.S.C. 3501 et seq.

Dated: May 24, 2017.

Robert N. Sidman,

Deputy Secretary of the Commission.

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